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Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.,
Washington, D.C. 20554

Re: CC Docket No. 98-146

Dear Ms. Salas:

Transmitted herewith, on behalf of the National Rural Telecom Association (NRTA), are an original and four copies of its reply comments on the Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,

Margot Smiley Humphrey
Margot Smiley Humphrey

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter)
)
Inquiry Concerning the Deployment of)
Advanced Telecommunications Capability)
to All Americans in a Reasonable and)
Timely Fashion, and Possible Steps to)
Accelerate Such Deployment Pursuant)
to Section 706 of the Telecommunications)
Act of 1996)

CC Docket No. 98-146

REPLY COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	CC Docket 98-146
Capability to All Americans in a Reasonable)	
and Timely Fashion, and Possible Steps)	
to Accelerate Such Deployment)	
Pursuant to Section 706 of the)	
Telecommunications Act of 1996)	

REPLY COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

The National Rural Telecom Association (NRTA), by its attorneys, submits these reply comments to respond to opening comments in the above-captioned proceeding. NRTA's members are "rural telephone companies," as defined in 47 U.S.C. §254(37) (rural ILECs), that obtain financing under the programs administered by the Rural Utilities Service (RUS) and the Rural Telephone Bank (RTB). These rural ILECs depend on that financing and the explicit and implicit support provided under the Commission's rules and policies to provide high quality, evolving network capabilities in spite of the low density and resulting high unit costs of serving their rural areas.

I. INTRODUCTION AND SUMMARY

NRTA's opening comments explained (pp.4-8) that, given (a) the 1996 Act's clear nationwide mandate in §706 and §254, read together, for the reasonably equivalent rural and urban availability of advanced telecommunications capabilities and services and (b) the typical

failure of unaided marketplace forces to drive new technologies and services throughout the nation's rural markets on a "reasonable and timely basis." compliance with the law will eventually require resort to the "sufficient" federal universal service support mechanisms mandated by §254.

Comments generally acknowledge the Act's commitment to nationwide advanced broadband capability. Those that oppose the goal itself are at odds with the Act and seek relief beyond the Commission's power without further legislation. Those that deny the need for support because the market will do the job alone speak prematurely because the market is at such an early stage. The Commission cannot yet rule out future intervention, but should stand ready to invoke §254.

NRTA's comments also explained (pp.8-10) that government intervention to require and support nationwide availability would be premature and unnecessarily costly at this stage in the development of broadband technologies and market-driven advanced broadband deployment. The recommendation to wait before intervening in the marketplace is consistent with both comments that doubt the need for support and comments that recognize that intervening now would be premature. Thus far, in spite of the explosive growth of the Internet and other services with a seemingly insatiable appetite for bandwidth, consumer demand for advanced broadband capability is a nascent phenomenon even in the urban markets where market forces are operating healthily. Waiting for the interplay of technologies, the patterns of business and residential demand and the resulting economies of scale to emerge somewhat more clearly in these markets should reduce the cost and increase the cost effectiveness of federal support mechanisms to

spread the developments to places that market forces neglect or are unacceptably slow to develop.

Prudent delay and observation of the market does not mean that the Commission should ignore the statutory commitment to nationwide advanced broadband capability until availability is so widespread as to be "conventional," until all the considerations in §254 are "met," or until full competition has been achieved in a market. Congress realized rural competition could develop slowly, but still wanted reasonably timely and comparable rural deployment, with necessary support. The Commission's challenge is, in effect, to find the right moment to invoke §254 to maintain the pace of rural development without unnecessary cost. In any event, the Commission should not prescribe advanced broadband deployment for any market that cannot support that development on its own without also providing "sufficient" and "predictable" federal support to ensure "affordable" and "reasonably comparable" rural and urban rates.

II. THERE IS GENERAL AGREEMENT THAT CONGRESS INTENDS TO FOSTER NATIONWIDE ADVANCED BROADBAND DEPLOYMENT, DESPITE DIFFERENT VIEWS AS TO HOW, WHEN OR WHETHER THE COMMISSION SHOULD INTERVENE

A. It Is Too Early to Rule Out Eventual Commission Action to Achieve Nationwide Advanced Broadband Capability

Campaign for Telecommunications Access agrees with NRTA and others (pp. i-ii, 7-8) that §706 requires ubiquitous broadband availability, and goes even further to maintain that the infrastructure modernization policy encompasses availability to handicapped and elderly, as well as rural consumers. Information Renaissance adds its sound interpretation that the §706 mandate for extending advanced broadband capability to "all" includes availability for all residences. It

cautions, however, that the Commission should exercise its authority and responsibility under both §706 and §254 to satisfy the 1996 Act, rather than relegating nationwide residential availability of advanced broadband capability solely to the §254 universal service regime.

Not all comments support the notion that advanced broadband capability is a proper universal service mandate or that universal service measures will be necessary, but their comments do not warrant ignoring the statutory commitments or ruling out intervention at the proper time. These objections often challenge the statutory directives themselves, and thus do not help to delineate the Commission's obligations under §706. Nor do speculations that the universal service requirements adopted by Congress and the Commission will dampen competition or unsupported Pollyanna predictions that the marketplace will fulfill Congress's intent without government intervention in rural markets provide valid excuses for deciding now that the Commission will not eventually need to intervene to bring about the nationwide network modernization that is a fundamental national commitment.

For, example, the Technology Entrepreneurs Coalition (TEC) (pp.30-36) generally opposes universal service measures — most vehemently for schools and libraries, but also for rural areas — because it fears that requiring all providers to contribute to universal service support will act as a barrier to entry. TEC's discussions of universal service (pp. 22-24, 30-36, 38-39) do not analyze whether or when the 1996 Act's specified universal service mandates and mechanisms should come into play for advanced broadband capabilities and services. Instead, TEC voices disagreement with the fundamental concept of supporting "affordable" and geographically averaged rates by means of broad-based provider contributions. That is not the

issue here, and, in any event, TEC gives no indication how the supposed barrier could be removed without excusing all carriers from contributions, regardless of the impact on universal service. Otherwise, selective exceptions would impede competition by those competitors not relieved of the duty to contribute. Moreover, TEC has failed to demonstrate that unaided competition will make advanced broadband available to rural markets on a “reasonable and timely basis,” consistent with §706, without support. Those markets require universal service support even to enjoy affordable telephone service. Indeed, TEC has not even shown that support to achieve what §§706 and 254 require will have the adverse effects it surmises, particularly if the Commission first waits to see the likely contours of marketplace development, as NRTA has urged.

Williams (p. 18) also protests the means chosen to fund universal service by the 1996 Act, which it characterizes as a “tax” that Congress should provide from general revenues. It does not bother to explore how such replacement legislation could be adopted any time soon, in the light of current political controversy about the cost of school and library support. And such attacks on the national policy must be addressed to Congress, which enacted the support framework Williams and TEC oppose, not to the agency charged with implementing the law as Congress passed it.

Even GTE, which seeks (pp. 23-24) to deprive rural residential customers of the universal service benefits of averaging and class of service rate differentials, does not definitively claim now that there will not be a future need for government intervention to realize the §706 advanced nationwide broadband deployment policy. If support proves necessary to satisfy §706

after a suitable period to observe market development. GTE advocates (n.34) using a widely-funded universal service mechanism to remedy market failure.

B. If Marketplace Forces Do Not Extend Advanced Broadband Capability to Rural Markets on a Reasonable and Timely Basis, the Commission Must Remedy that Lack and any Undue Lag in Rural Access through the Federal Universal Service Mechanisms

The mandate of §706 finds a parallel duty and implementation mechanism in §254(b)(2), which requires the universal service process to pursue “access to advanced telecommunications services ... in all regions of the nation.” Parties such as NTCA (pp.5-6) and TDS (see, pp. 3-7, 12-14) not only take the Act at its word when it calls for “reasonable and timely” deployment of advanced capabilities “to all Americans” (§706(a)), but also remind the Commission of the overlapping mandate in §254(b)(3) for “reasonably comparable” rural and urban services, rates and access to “advanced telecommunications and information services” (§254(b)(3)).

NRTA, based on the long experience of rural ILEC's with serving and modernizing low-density areas, has predicted that universal service support will ultimately be necessary for high cost rural areas, but concluded that it is too early at present to turn to universal service requirements or support plans. Its rationale is that the marketplace must first be given an opportunity to perform and to reveal where marketplace advances are likely to languish or lag. NTCA points to efforts by some of its members to provide broadband capability, which also supports the temporary wait-and-watch approach that NRTA advocates. The Rural Policy Research Institute (RUPRI) (see, ans. ## 1 and 2) doubts that marketplace forces will adequately

serve rural areas, but also recognizes the need for monitoring the extent to which rural advancements keep pace as capabilities elsewhere evolve.¹

Some comments seem to believe that the Commission can simply prescribe or otherwise force broadband deployment by ILECs by imposing conditions or, in effect, selling regulatory reform for non-compensatory upgrades. APT continues to press (pp.3-6) for conditions on mergers and acquisitions by ILECs and for “social contracts” to force deployment of advanced broadband capabilities where marketplace forces alone are not sufficient. ALTS supports (p. 18) the notion of conditions on acquisitions, but with an emphasis on access by other carriers to ILEC facilities, rather than consumer access to advanced capabilities and services — Congress’s purpose in enacting §§706 and 254. But no comments have satisfactorily explained how bartering other regulatory relief can substitute for sufficient revenues to support deployment in high cost areas. NRTA does not believe that the Commission has the authority to condition mergers or other regulatory relief upon non-compensatory deployment. Where regulatory burdens are not necessary, the 1996 Act requires the Commission to do away with them in 47 U.S.C. §§10, 11. The statute does not authorize the Commission to extract other carrier concessions for justifiable deregulation, and there is certainly no rationale for trading regulatory relief that is not justified in its own right as a bribe for uneconomic deployment. Moreover, there is no statutory authority to hold hostage the interests of consumers that would be served by a merger or acquisition or by reduced regulatory costs to the willingness of the company to make

¹ NRTA is puzzled, however, by RUPRI’s apparent contention (ans. # 9) that “hold[ing] business and residential prices closer to cost” will “equalize market incentives across sectors” for high cost support mechanisms. The experience of NRTA members is not consistent with the notion that full cost-based prices would provide similar, let alone equal, market incentives with respect to deploying advanced technology to serve either the residential or the business sector in rural and urban areas.

uneconomic network investments, without universal service support. Thus, the Commission should not prescribe advanced broadband deployment beyond what marketplace forces would induce a carrier to undertake on its own, either directly or by requiring an ILEC to agree to deploy uneconomic infrastructure or to forego other relief that is consistent with the public interest, unless the Commission also provides sufficient universal service support.

Nor is the DCPSC's dissatisfaction (pp. 3-7) with the rural emphasis in the NOI grounds for neglecting the Commission's statutory obligations to rural residents and businesses. Congress expressly embraced geographic proliferation of advanced capabilities in both §706 and §254. The §706 intent to encourage availability "to all Americans" comprehends both poor and rural Americans. NRTA agrees that low income consumers should not be deprived of access to advanced capabilities, but does not see why the Commission cannot follow the intent of Congress to meet both low income and rural needs. In either case, it is too early for government intervention that second-guesses the marketplace before marketplace forces have developed sufficiently to evaluate where market-driven deployment is likely to lag or languish.

Some comments seem to suggest that the Commission can already tell that no intervention will be necessary in the future. Intermedia (p. 8-10) claims that "market forces have responded and will continue to respond to the bandwidth needs of consumers in all areas of the country," with CLECs leading the way even in rural markets. GSA asserts (pp. 2-3) that advanced capability is being deployed where there is competition and that "the benefits of the Internet have been achieved quite evenly, with no apparent preference to users in any geographical area." Since broadband capability is not available to many urban and rural

consumers, customers in some rural markets must pay toll charges to reach the Internet and many rural customers are served by lines with bridged taps or loading coils, NRTA questions whether the accuracy of GSA's perceptions may be skewed because government installations are often attractive cream skimming targets.

GTE's perceptions of rural access to advanced telecommunications resources are less rose-tinted than the GSA's. GTE reports that markets develop unevenly, with urban areas attracting investment in advanced technology first. Nortel explains (pp. 13-14) that rural areas typically cannot support rural-only solutions because cost effective rural deployment requires the economies of scale realized through market development in markets with large customer bases. Williams also observes (pp. 7-8) that increased manufacturing to meet intercity and urban needs will help to decrease unit costs and "make expansion into rural areas less expensive." Even CIX, which urges heavy-handed interconnection regulation of ILECs to foster Internet development and seems to favor delaying rural modernization until competition has developed, admits (p. 3) that "the issue of advanced services to rural Americans is raised in Section 254 and resonates in the language of Section 706." Hence, CIX acknowledges that rural issues should eventually be resolved under §254.

C. The Time for Government Intervention to Ensure Advanced Broadband Universal Service Has Not Yet Arrived

Although there is controversy in the record over whether or when universal service intervention will be necessary, there is virtual unanimity among the parties that it is too early in the course of market-based broadband development for government intervention to prescribe and support universal advanced broadband deployment. GTE counsels (p.13) waiting three to five

years to ascertain whether advanced broadband remains under-deployed where there is demand and deciding then whether it is necessary to adopt explicit universal service mechanisms to support deployment. TDS Telecom agrees that the market must be given time to develop before the Commission steps in with the universal service intervention TDS believes will ultimately be necessary. The cost of support at an appropriate later time, it explains (pp. 7-11), will be significantly lower than the staggering cost that would result from prescribing nationwide advanced broadband deployment now. NRTA agrees that prescription and support determinations would be premature and unnecessarily costly at this time.

Several parties want to put off rural network modernization longer than the new law permits. They misinterpret §254(c) and the factors the Commission and the universal service joint board are required to “consider” in deciding when to evolve the definition of “the services that are supported by Federal universal service support mechanisms.” NRTA agrees with GTE that the law requires consideration of “the extent to which” a service “has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.” We also agree that right now is not the right time to discern whether market choices by consumers will lead to substantial residential deployment even in high density, low cost markets. However, GTE is wrong (p. 11) to confuse the four criteria that must be “consider[ed]” in evolving the universal service definition with standards for “meeting the statutory definition of ‘universal service.’” The Commission recognized the limited scope of the requirement to “consider” factors in its universal service decision²

² Federal State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 8809 (¶61) (1997).

Ameritech is even further off the mark in its assertion (pp. 14-15) that “advanced telecommunications capability and advanced services should not be considered part of universal service, at a minimum, until the market has operated to effect such widespread deployment that [the capabilities] cease to be ‘advanced’ and instead become[] ‘conventional.’ ”³ Indeed, to accept Ameritech’s strained reading of §254(c)(1), it would be necessary to pretend that Congress did not mean what it said in mandating access to “advanced telecommunications and information services” throughout the U.S. (§254(b)(2)), access to reasonably comparable “advanced telecommunications and information services” for rural subscribers (§254(b)(3)), enhanced access (“to the extent technologically feasible and economically reasonable”) to “advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries” (§254(h)(2)) or “advanced telecommunications capability” in §706, which was enacted precisely to “ensure[] that advanced telecommunications capability is promptly deployed.”⁴

The middle course between Ameritech’s pinched reading of the nationwide advanced capability mandate and overly hasty, needlessly costly, prescriptive intervention in broadband deployment is the most reasonable. Such a course would give the marketplace a chance to operate. It would then resort to the §254 federal universal service mechanisms as soon as necessary to achieve the statutory directives for “reasonable and timely” deployment of advanced

³ Nor is there any requirement for the joint board to determine that advanced capabilities are “essential to education, public health, or public safety,” as GTE presumes (p.11), since §706 has already determined that reasonably timely nationwide availability is an element of basic national policy.

⁴ Joint Explanatory Statement of the Committee of Conference at 210.

telecommunications capability” for all Americans (§706) and access to reasonably comparable services and rates, including “advanced telecommunications and information services” for rural and urban consumers (§254(b)(3)).

At the very least, the Commission should recognize that §706 and §254, read together, obligate the Commission to take action if predictions that the marketplace will meet rural demands and needs on a “reasonable and timely basis” do not prove true as urban broadband deployment gains momentum. Both sections would be pointless if Ameritech were correct (pp. 16-17) that development “on a reasonable and timely basis” means only that the marketplace must be left to itself, once excessive regulatory burdens on ILECs have been removed. It would also be useless if CIX were correct (p.21) that competition must be in place before advanced broadband capability becomes a proper subject of universal service. The rural safeguards in §§214(e), 251(f) and 253(f) of the Act clearly demonstrate that Congress had concerns about the timing and impact of competition in rural markets. It knew that competition might be delayed for rural markets, but did not intend that economic fact to deprive rural customers of advances. Nothing in §254 or any other section can conceivably be read as a prerequisite for full rural competition before “sufficient” federal support is made available. The marketplace must be given a chance to work and ILECs must be freed from excessive and asymmetrical regulations, to be sure, but the Commission cannot countenance rural market failure or undue delays in rural deployment of advanced capabilities or withhold the support needed to accomplish that national policy without violating the clear directives of Congress.

III. THE COMMENTS HAVE NOT JUSTIFIED SUBJECTING EVEN THE LARGEST ILEC's -- LET ALONE RURAL ILECs -- TO MORE INVASIVE NETWORK OPENING REQUIREMENTS FOR PROVIDING ADVANCED BROADBAND CAPABILITIES

Various parties argue that additional network opening requirements under §251(c) should be applied to the ILECs to encourage others to provide broadband services without building their own facilities. MCI, for example, claims (p.22)that the cost of duplicating an ILEC's "last mile" facilities is prohibitive. Verio argues (pp. 4-5) that ISPs must be guaranteed non-discriminatory use of ILEC capabilities, but not as carriers under §251 presumably because that would subject them to the charges and contributions required of other carriers. CIX argues (pp. 14-16) that even heavier requirements for opening ILEC lines and networks to competitors must extend to new broadband capabilities. although it also inconsistently demonstrates (pp. 9-13) that all sorts of providers are springing up to provide advanced Internet capabilities on a "reasonable and timely basis."

The strident demands for more intrusive access to ILEC facilities and functions on an ever-increasing level of fragmentation can only be justified if the arrangements are "essential" to competitors' services. This is not the case, as Ameritech and the economic analysis by Dr. Frank Pampush attached to its comments so ably explain⁵. They demonstrate that it is simply not true that the ILECs' loops or other network elements and services are the only or, perhaps, even the best source of broadband capability. They explain that the appropriation of ILEC functions and services for their competitors' use actually discourages the deployment of innovative broadband technologies by others.

⁵ US West also compellingly controverts (pp. 26-31) the essential facility presumption underlying demands by competitors to use the ILECs' facilities and services on favorable, non-marketplace driven terms.

Dr. Pampush's analysis gains further weight from the comments of parties such as AOL, which demands (pp. 9-11) non-discriminatory access to cable systems as well as to ILECs. Indeed, Bell Atlantic compellingly denies (p. 3) that the "last mile" is a bottleneck, and points out that, to the extent there is any entrenched provider—cable companies, using cable modems, are the privileged incumbents. Circuit City takes this reasoning further to request (p. 7-14) treatment of cable companies' Internet access services as regulated common carrier telecommunications activities, rather than information services. It wants the Commission to require these cable Internet providers to unbundle and provide their competitors with access to their basic transmission capabilities. This regulation, it explains (p. 13), will help to avoid the danger posed by "permit[ing] cable to maintain a monopoly over the rapidly-expanding market for broadband data services." Without this requirement, warns Circuit City (*ibid.*), cable providers "would be in the enviable position of becoming the dominant providers of broadband access to data networks and the Internet." Therefore, it is abundantly clear from the record that ILECs are not regarded as the sole available source for advanced broadband capability: In short, there is no ILEC "last mile" bottleneck.

Cable companies seem to realize that their favored position carries the danger of some regulatory safeguards. Significantly, Comcast, a huge cable MSO, seeks to avoid regulation for its transmission of broadband communications on the grounds that it is an information provider in its Internet or data transmission activities and that broadband deployment is proceeding on a "reasonable and timely basis" without Commission intervention. NCTA's comments are also dedicated (a) to arguing against regulation of cable companies providing advanced broadband

capability and (b) to demonstrating that there is no broadband bottleneck, even in the local loop, since "multiple providers are deploying broadband facilities (including facilities directly into homes and businesses) at a rapid rate in an increasingly competitive environment." Once again, the record negates any presumption that ILECs control "essential facilities" for broadband transmissions or should be subject to heavier regulation than other broadband providers.

With the many conflicting market observations and predictions in the record, the Commission would do well to stay its regulatory hand while the development of the still-nascent advanced broadband market unfolds. Indeed, in light of Congress's well-known concerns with ensuring full rural participation in the information economy and society, it would be foolhardy to place additional regulatory obstacles in the path of rural ILECs. New burdens to avoid include jeopardizing rural ILECs' exemption from the present rules implementing §251(c) until their state regulators make the specific findings required for termination by §251(f), as well as imposing any new collocation, unbundling or other requirements. In many rural communities, the ILEC is the only Internet provider available. It should not be forced to incur greater regulatory costs, including the burdens of a separate subsidiary structure. It would be particularly damaging to the interests of the outlying, highest cost rural customers to treat the transmission component of Internet access service as a regulated common carrier service when a rural ILEC is involved, but let a cable provider serving only the dense center of a rural area use its own last mile facilities to provide Internet access free from regulation by providing the identical combination of access and information as a hybrid information service.

The Commission should also refrain from other actions urged on it in comments here that would compromise universal service. For example, it should not heed demands to do away with

business and residential rate differentials made by GSA (p.7) and GTE (p. iii). The DCPSC reasonably opposes such "reform" (p. 13-14) as a step away from wide residential availability of capabilities and services needed to access advanced services.

The Commission should also reject PCIA's attack (pp. 34-35) on rate averaging. Rate averaging is an essential link in widely available advanced network capability at affordable and reasonably comparable rural and urban prices. There can be no doubt that a residential or business consumer able to connect to and use the Internet for only a flat local charge has a distinct advantage over a customer that incurs usage-based long distance charges for the time spent on the Internet.

IV. CONCLUSION

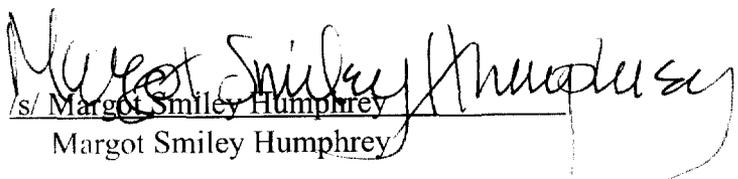
NRTA has limited its reply comments to a few key issues raised in the comments in this proceeding. It has shown here that the best course for the Commission is to recognize that advanced broadband capability is in an early stage of development. It is certainly too early to conclude that no Commission action will be necessary to extend its reach to all Americans, as §§607 and 254 contemplate. While NRTA believes that universal service support under §254 will eventually be necessary for rural broadband availability, premature intervention would be prohibitively and needlessly costly.

Accordingly, the Commission should wait and let the marketplace develop for a while before it takes action to implement nationwide deployment. It should then provide the support necessary to make sure that rural access to comparable broadband capabilities and prices are available without delays that could harm rural access to information or rural economic

development. In the meantime, the Commission should remove the regulatory barriers to rural ILEC deployment caused by uneven regulation of competitors and incumbents and refrain from adding any further regulatory burdens that will slow or stall rural advanced broadband deployment.

Respectfully submitted,

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October 8, 1998

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing Reply Comments of the National Rural Telecom Association on the Inquiry Concerning the Deployment of Advanced Telecommunications, CC Docket No. 98-146, have been served on the parties listed below, via first class mail, postage prepaid on the 8th day of October, 1998.

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